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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,733	01/24/2006	Yung-Huei Lan	CUI-12286	1973
23123 7590 12/03/2008 SCHMEISER OLSEN & WATTS 18 E. UNIVERSITY DRIVE SUITE # 101 MESA, AZ 85201				
EXAMINER KING, ANITA M				
ART UNIT		PAPER NUMBER		
3632				
MAIL DATE		DELIVERY MODE		
12/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,733

Applicant(s)

LAN, YUNG-HUEI

Examiner

Anita M. King

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-31 is/are pending in the application.
4a) Of the above claim(s) 7-17 and 29-31 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1 and 2 is/are rejected.
7) ☒ Claim(s) 3-6 and 19-28 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 31 July 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

This is the third office action for application number 10/565,733, Adjustable Cup Holder, filed on January 25, 2006.

Election/Restrictions

Claims 7-17 and 29-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on December 20, 2007.

Drawings

The drawings were received on July 31, 2008. These drawings are acceptable.

Response to Amendment

The indicated allowability of claim 18 (now canceled) is withdrawn in view of the previously cited reference(s) to Massey and Jacobi, Jr.. Rejections based on the cited reference(s) follow.

Claim Objections

Claims 1, 2 and 3 are objected to because of the following informalities: the subject matter starting on line 6 of claim, beginning with "and a top cover...", appears to be grammatically incorrect; in line 1 of claim 2, "bolder" should be changed to --holder--; and in line 3 of claim 3, "&" should be --a-- as previously cited in the claimed. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,458,164 to Massey in view of U.S. Patent 6,059,245 to Hermansen et al., hereinafter, Hermansen, and in further view of U.S. Patent 2,839,260 to Jacobi, Jr., hereinafter, Jacobi. Massey discloses an adjustable cup-holder (10) comprising: a bottom (11); a handle (12), a lower end of the handle connecting to the bottom; a horizontally flexible holder member (13) and wherein the holder member and an upper end of the handle are in a connection.

Massey discloses the claimed invention except for the limitation of a horizontally flexible ring. Hermansen teaches an adjustable cup-holder (10) having a bottom (126), a handle (20), a lower end of the handle connecting to the bottom, a horizontally flexible ring (22 & 24), wherein the ring and an upper end of the handle are in an adjustable connection for different dimensions of cups, and wherein an end of the flexible ring connects to the handle to form a fixing end, another end of the ring is a free end, the free end is adjustable and fixed on the handle or the fixing end of the ring. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the holder member in Massey to have been a flexible ring as taught by Hermansen for the purpose of providing an alternative means for gripping around a cup and increasing the variety of cups that can be supported by the holder.

Massey in view of Hermansen disclose the claimed invention except for the limitations of a top cover, a chassis, and a sucker. Jacobi teaches a cup holder (10) having a bottom wall(16) which is comparable to the bottom wall (20) in Massey, a top cover (22) protruding

downward and a cylindrical body (84) extending from a center of the bottom, a chassis (82) having a socket (91) protruding upward therefrom (91) and is below the top cover, a sucker (102) is mounted on the chassis for sealing, the top cover and the bottom connect to each other for moving up and down and not being dismantled. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the bottom of the cup holder in Massey to have included the bottom having a top cover, chassis, and sucker as taught by Jacobi for the purpose of a means to prevent laterally displacement or overturning of the holder when under all ordinary circumstances of jouncing or jolting, but at the same time permits the user instantly and without special manipulation to lift the holder free from the table or other sustaining surface.

Allowable Subject Matter

Claims 3-6 and 19-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1 and 2 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Allen Shriver can be reached on (571) 272-6698. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anita M. King/
Primary Examiner, Art Unit 3632

December 3, 2008